taking of the bailee. *Cf.* 17 HARV. L. REV. 126. Although it is clear that the undertaking primarily gives rise to the duty, a more uncertain phase of the question is encountered in considering whether the extent of that duty is to be determined likewise from the undertaking itself, or by certain established rules of law. Whenever an explicit understanding exists between the parties, the extent of the bailee's liability may indeed be determined from his undertaking, but in the absence of any such understanding it is hard to believe that he does in fact undertake to bestow any particular degree of care. Even a mutual understanding, if it be to the effect that the bailee shall not be liable for negligence, would not excuse him from the exercise of proper care. *Lancaster Co. Nat'l Bank* v. *Smith*, 62 Pa. St. 47. Furthermore, where both parties mistakenly believe that the liability of the bailee is absolute, it can scarcely be contended that he ought thereby to be placed in the position of an insurer. It would seem, therefore, that, in order to determine the extent of a bailee's liability in certain cases, one must go beyond the actual undertaking and consider what care the law requires of him in performing the duty which he has undertaken. This depends upon the nature of the bailment. In case of a loan for the benefit of the bailee great care is required, in case of a bailment for hire for the benefit of both parties ordinary care is required, and in case of a deposit for the benefit of the bailor slight care is required. It may be said that these three degrees of care in ordinary bailments, having become crystallized into rules of law in much the same way that the absolute liability of the common carrier has become established, determine the extent of the bailee's liability in all cases in which it either cannot or ought not to be determined from the actual undertaking.

Although the courts still continue to speak of the gratuitous bailee as being liable only for gross negligence, gross negligence seems to mean nothing more nor less than ordinary negligence. Various judges have in fact protested against the use of the term "gross" in this connection. See Baron Rolfe in *Wilson* v. *Brett*, 11 M. & W. 113. In whatever way the extent of the gratuitous bailee's duty may be determined, it must be clear that he is liable for any negligence arising from a failure to properly perform that duty.

ASSIGNMENT OF LIFE INSURANCE POLICY TO ONE WITHOUT INSURABLE INTEREST. — It is well settled in life insurance law that a policy issued to one who has no insurable interest in the life insured is void as a wagering contract. An early English case, proceeding upon the theory that life insurance is a contract of indemnity like property insurance, required an insurable interest at the time of loss. *Godsall* v. *Boldero*, 9 East 71. But this theory was repudiated in a later case where a creditor's interest ceased before the death of the debtor whom he had insured. *Dalby* v. *India, etc., Co.*, 15 C. B. 365. See also *Connecticut, etc., Co.* v. *Schæfer*, 94 U. S. 457. On the further question whether a valid policy may be assigned to one who has no insurable interest, there has been more dispute, but the tendency seems to be to hold such an assignment valid. *Mutual, etc., Co.* v. *Allen*, 138 Mass. 24. The authorities are collected in a recent article. *Validity of Assignments of Life Insurance Policies to Persons Having no Insurable Interest in the Life of the Insured*, by J. T. Ford, 58 Central L. J. 184 (Mar. 4, 1904).

The argument of the minority is, in brief, that an assignment to one without interest is simply an indirect means of getting a wagering contract and of giving to the assignee an interest in the death rather than in the life of the insured, — objects which the law considers against public policy when attempted directly. On the other hand it is argued that what public policy forbids is the obtaining of insurance on a life by a stranger, as distinguished from either the naming of a stranger as a beneficiary or the assignment by the insured of a policy to a stranger, in which case a man voluntarily gives to another an interest in his decease.

It would seem that the courts which have denied the validity of such assignments have been led to that result by considering cases which did not necessarily

raise the question, namely, cases of assignments by debtors to their creditors. In such cases courts were quite naturally willing to find that the assignment was for collateral security and to let the assignee keep the proceeds only to the extent of his interest. But from this implication of fact it proved an easy step to a hard and fast rule of law that in every such case the assignee can recover only his debt and disbursements, and that the "policy of the law forbids" any further enforcement of the assignment. *Lewy & Co.* v. *Gilliard*, 76 Tex. 400; *Warnock* v. *Davis*, 104 U. S. 775. Obviously this reasoning, sound in origin as to collateral security, does not apply either where the interest is not directly pecuniary or where the assignee has no interest at all; and yet the results of the creditor cases together with loose *dicta* in them have largely influenced, it is believed, those decisions which hold that an assignee must have an insurable interest. The attitude, consequently, in determining how far these assignments are good, has been how far they are supported by an insurable interest, and not the normal attitude now prevailing, how far this is different from any assignment of a chose n action and what public policy forbids it. The arguments of the cases *pro* and *con* are collected in the article cited.

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